

~~CONFIDENTIAL~~

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT JOHN STOCKTON, JR.,)	C 11-27784 RMW (PR)
)	
Petitioner,)	ORDER DENYING MOTIONS FOR
)	RECONSIDERATION
vs.)	
)	
DERREL ADAMS,)	
)	(Docket Nos. 36, 37, 39, 40)
Respondent.)	
_____)	

Petitioner, a California prisoner proceeding pro se, filed a federal petition for writ of habeas corpus challenging his 2009 gang validation. On February 20, 2015, the court denied the petition and denied a certificate of appealability. On February 27, 2015, petitioner filed a motion for reconsideration, and motion for leave to file a motion for reconsideration.

Rule 60(b) of the Federal Rules of Civil Procedure provides for reconsideration where one or more of the following is shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud by the adverse party; (4) the judgment is void; (5) satisfaction of the judgment; or (6) any other reason justifying relief. See Fed. R. Civ. P. 60(b); School Dist. 1J v. ACandS Inc., 5 F.3d 1255, 1263 (9th Cir.1993). Although couched in broad terms, subparagraph (6) requires a showing that the grounds justifying relief are

extraordinary. Twentieth Century - Fox Film Corp. v. Dunnahoo, 637 F.2d 1338, 1341 (9th Cir. 1981).

Rule 60(b)(6) affords courts the discretion and power “to vacate judgments whenever such action is appropriate to accomplish justice.” Phelps v. Alameida, 569 F.3d 1120, 1135 (9th Cir. 2009). In applying Rule 60(b)(6) to petitions for habeas corpus, the Ninth Circuit has considered the following factors to guide its exercise of its Rule 60(b)(6) discretion: (1) a showing of extraordinary circumstances, such as a change in intervening law; (2) the petitioner’s exercise of diligence in pursuing the issue during federal habeas proceedings; (3) interest in finality; (4) delay between the finality of the judgment and the motion for Rule 60(b)(6) relief; (5) degree of connection between the extraordinary circumstance and the decision for which reconsideration is sought; and (6) comity. See id. (granting 60(b)(6) relief where the core issue in petition was not settled until fifteen months after the appeal became final at which point it became clear that petitioner’s interpretation of the issue was the correct one).

In the present motions, petitioner does not indicate what provision of Rule 60(b) applies to his case. Petitioner does not make a showing of mistake, inadvertence, surprise or excusable neglect. He does not set forth any newly discovered evidence, fraud, or any grounds for finding that the judgment is void or has been satisfied. Nor does he set forth any other reason justifying relief. The court has reviewed and considered petitioner’s motions as well as its order denying the petition, and concluded that petitioner is not entitled to relief. Accordingly, the motion for leave to file a motion for reconsideration, as well as the motion for reconsideration are DENIED.

Petitioner has also failed to make a substantial showing that his claims amounted to a denial of his constitutional rights, or demonstrate that a reasonable jurist would find the denial of his claims debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, a certificate of appealability is DENIED.

IT IS SO ORDERED.

DATED: i HFFI


RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ROBERT JOHN STOCKTON JR,
Plaintiff,

Case Number: CV11-05562 RMW

CERTIFICATE OF SERVICE

v.

DERREL G ADAMS et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 11, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Robert John Stockton J-80992
C7-105
HDSP
P.O. Box 3030
Susanville, CA 96127

Dated: August 11, 2015

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk